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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,178	01/12/2000	Theodore M. Osborne, II	1306	6648

			EXAMINER
22494	7590	03/17/2004	STEELMAN, MARY J

DALY, CROWLEY & MOFFORD, LLP
SUITE 101
275 TURNPIKE STREET
CANTON, MA 02021-2310

ART UNIT	PAPER NUMBER
2122	16

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<u>PERIOD FOR REPLY</u> [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☒ The proposed amendment(s) will not be entered because:

    (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ they raise the issue of new matter (see Note below);

    (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: *See attached response..*

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: *1-22*.

    Claim(s) withdrawn from consideration: _____.

8.☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10.☐ Other: _____

Applicant's arguments filed 02/20/2004 have been fully considered but they are not persuasive.

Weinberg disclosed a Web site (server) analysis program implemented as a collection of software components. Weinberg's invention generates test scenarios (col. 2, lines 38-39 and col. 3, line 7) that emulates multiple concurrent users on the system. Weinberg specified that the content tested is objects (components) (col. 6, lines 8-15) and that a user can retrieve a URL (content object) from the server (col. 10, lines 7-9.) In the Abstract Weinberg disclosed, "A visual Web site analysis program, implemented as a collection of **software components**, provides a variety of features for facilitating the analysis, management and **load testing** of Web sites." (emphasis added)

Logan disclosed more specific details regarding application components (Col. 2, lines 19-22 and col. 6, lines 52-54) and the utilization of a server to coordinate testing. Logan disclosed middleware, testing components, JAVABeans...

(A) Regarding claims 1 & 18, Applicant has argued (Request for Reconsideration, dated 02/20/2004, page 3, paragraph 1 & last paragraph of page 6 through paragraph 1 of page 7), in substance, that "Weinberg and Logan neither describe nor suggest a combination of "providing test code that exercises said *technology based software component* of the application under test..." with "...synchronizing and executing *a plurality of instances of the test code*..." as recited in claim 1. (emphasis added by Applicant.)

Examiner' Response:

Logan disclosed, "technology based software components" at col. 6, lines 52-56, "When testing

components, e.g., JAVABeans..." (technology based software components) JAVABeans are an

example of middleware components. Logan disclosed at col. 6, line 29, "...repeating an

established suite of tests..." (synchronizing and executing a plurality of instances)

(B) Regarding claim 1, Applicant further recites (Request for Reconsideration, dated 02/20/2004,

page 3, paragraphs 2 & 3), "the technology based software components of the present invention

include middleware, which interact with a database." In contrast, Applicant suggests that

Weinberg's HTML documents, GIF files, sound files, JAVA applets and aglets are front-end

software. Therefore Weinberg does not "provide test code that exercises *said technology based*

software component of the application under test..." (emphasis added by Applicant.)

Examiner' Response:

Logan disclosed, "technology based software components" at col. 6, lines 52-56, "When testing

components, e.g., JAVABeans..." JAVABeans are an example of middleware components.

(C) Regarding claim 6 (Request for Reconsideration, dated 02/20/2004, page 5, paragraph 2),

Applicant argues that references fail to recite the limitation: "claimed graphical display having as

an independent variable the number of instances of the test code and the dependent variable is

the performance data.

Examiner' Response:

Weinberg provided a very broad reference at Fig. 26 and col. 18, lines 64-67, "...the Action

Tracker plug-in communicates with the Web sites...to retrieve server access log files for

performing Web site **activity analyses**." (emphasis added) Also, col. 33, lines 3-8, "...user is

presented with a set of **graphical reports** that allow the user (to) evaluate the site's

performance..." (emphasis added) Graphical reports that allow the user to evaluate the site's

performance can certainly include "having as an independent variable the number of instances of

the test code and the dependent variable is the performance data."

(D) Regarding claim 7, (Request for Reconsideration, dated 02/20/2004, page 5, paragraph 3),

Applicant argues the cited references neither describe nor suggest "...preparing a graphical

display having as an independent variable the number of instances of the test code and the

dependent variable is derived from the performance data."

Examiner' Response:

Weinberg provided a very broad reference at Fig. 26 and col. 18, lines 64-67, "...the Action

Tracker plug-in communicates with the Web sites...to retrieve server access log files for

performing Web site **activity analyses**." (emphasis added) Also, col. 33, lines 3-8, "...user is

presented with a set of **graphical reports** that allow the user (to) evaluate the site's

performance..." (emphasis added) Graphical reports that allow the user to evaluate the site's

performance can certainly include "having as an independent variable the number of instances of

the test code and the dependent variable derived from the performance data." Also see

Weinberg, col. 32, line 64 – col. 33, line 8, "...records various performance-related

characteristics of these responses. These characteristics include...response times to individual

client requests...the user is presented with a set of graphical reports...the user can...compare

response times of different site components..."

(E) Regarding claim 10, (Request for Reconsideration, dated 02/20/2004, page 5, paragraph 5),

Applicant argues the combined references neither describe nor suggest a combination of

"...gathering of test data on the performance of at least _one technology based software_

component of the application under test..." with testing "...at _a plurality of load conditions_..."

(emphasis added by Applicant)

Examiner' Response:

Weinberg disclosed in the Abstract, lines 1-4, "_load testing_ of Web sites." (emphasis added) (a

plurality of load conditions)   Logan disclosed, "technology based software components" at col.

6, lines 52-56, "When testing components, e.g., JAVABeans..."   JAVABeans are an example of

middleware components. (technology based software components) Logan disclosed at col. 6,

line 29, "...repeating an established suite of tests..."

(F) Regarding claims 11 and 12, (Request for Reconsideration, dated 02/20/2004, page 6,

paragraphs 3-5), Applicant argues the cited references neither describe nor suggest "the claimed

graphical format indicating response time as a function of load conditions", nor "the specified

graphical format is a Hi-Lo plot".

Examiner' Response:

A very broad reference is provided by Weinberg regarding graphical formats: (col. 33, line 3-4)

"...the user is presented with a set of graphical reports..."

(G) Regarding claim 21, (Request for Reconsideration, dated 02/20/2004, page 7, paragraph 4),

Applicant argues the cited references neither describe nor suggest "...the events at which times

are recorded includes times at which commands are issued to access functions of the software

components and times at which execution of the commands are completed."

Examiner' Response:

Logan provides a broad reference (col. 7, lines 25-40), "...include those where the expected

outcome of the test is known, so the actual outcome can be performed in the background to test

for proper functioning (timing of events)"

Examiner maintains the rejection of claims 1-22.

Mary Steelman

03/10/2004

TUAN DAM
SUPERVISORY PATENT EXAMINER